

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Albert Legare, # 191449, a/k/a)	
Albarr-ali Abdullah,)	C/A No. 2:08-4050-MBS
)	
Petitioner,)	
)	
vs.)	
)	ORDER
Cecilia Reynolds, Warden of Kershaw)	
Correctional Institution,)	
)	
Respondent.)	
_____)	

Petitioner Albert Legare is an inmate in custody of the South Carolina Department of Corrections. He currently is housed at Kershaw Correctional Institution in Kershaw, South Carolina. On December 18, 2008, Petitioner, appearing *pro se*, filed the within petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. The Magistrate Judge reviewed the petition pursuant to the provisions of 28 U.S.C. §§ 1915, 1915A, and the Anti-Terrorism and Effective Death Penalty Act of 1996, and applicable precedents. The Magistrate Judge filed a Report and Recommendation on January 28, 2009. The Magistrate Judge noted that the within petition constitutes Petitioner's second federal habeas corpus action, the first having been filed in 1999. See Legare v. Rushton, C/A No. 2:99-0289-MBS. The Magistrate Judge recommended the within petition be dismissed because Petitioner failed to obtain permission from the Court of Appeals for the Fourth Circuit to file a second or successive § 2254 petition. See 28 U.S.C. § 2244(b)(3) & (4); Rule 9 of the Rules Governing Section 2254 Proceedings. Petitioner filed no objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The within § 2254 petition is dismissed without prejudice and without issuance and service of process upon Respondent.

IT IS SO ORDERED.

/s/ Margaret B. Seymour

United States District Judge

Columbia, South Carolina

February 26 , 2009.

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.